

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

AT&T CORP. and ALASCOM, INC. d/b/a
AT&T Alascom, Inc.,

Plaintiffs,

v.

DAVID W. WALKER, DONALD J.
SCHROEDER, and TERRY A. GUNSEL,

Defendants.

TERRENCE J. DONAHUE, Trustee for
Chapter 7 Bankruptcy Estate of PT cable, Inc.

Plaintiff-in-Intervention,

v.

THE CARLYLE GROUP, L.P., a.k.a. The
Carlyle Group; *et al.*

Defendants-in-Intervention.

Case No. C04-5709FDB

ORDER DENYING MOTION TO
DISMISS FOR FAILURE TO JOIN
INDISPENSABLE PARTIES


Defendants The Carlyle Group, L.P., C/S Venture Investors, L.P., Carlyle U.S. Venture
Partners, L.P., Carlyle Venture Partners, L.P., Carlyle Venture Coinvestment LLC, Neptune
Communications, LLC, Neptune Global Systems, LLC (U.S.), William E. Conway, Jr., Richard G.

1 Darman, Brooke B. Coburn, Donald J. Schroeder, David W. Walker, and Terry A. Gunsell, move for
2 an order dismissing the Trustee's Complaint in Intervention pursuant to Fed. R. Civ. P. 12(B)(7) if
3 the prior owners (Cable & Wireless, International Digital Communications, and Pacific Telecom,
4 Inc., or officers and directors of PT Cable at the time of the inflated O&M billing) – who are
5 indispensable parties – cannot be joined.

6 The Defendants' Motion is not well taken. As the Trustee explains, the Dividend Loan and
7 subsequent Illegal Dividend were accomplished over one year after the PTC Affiliated Defendants
8 acquired PT Cable from the Prior Owners in May 1998, and it is the conduct of the PTC and NPH
9 directors and PTC Affiliated defendants surrounding the Dividend Loan and Illegal Dividend that is
10 specifically at issue. It is indisputable that the Prior Owners had no involvement in the conduct
11 related to the Dividend Loan and the Illegal Dividend. The Trustee does not seek to impose liability
12 on the moving defendants for PT Cable's overbillings to O&M, which claims belong to the carriers,
13 such as AT&T and Sprint. The common factual base for the Trustee's claims is the Dividend Loan
14 and Illegal Dividend accomplished with the PTC Affiliated Defendants' and individual Defendants'
15 actual or imputed knowledge of PT Cable's wrongful practice of inflating O&M charges. The Prior
16 Owners were not involved with the transfers at issue and received neither Dividend Loan repayments
17 nor proceeds from the Illegal Dividend.

18 ACCORDINGLY, IT IS ORDERED: The Motion to Dismiss for Failure To Join
19 Indispensable Parties [Dkt. # 99] is DENIED.

20 DATED this 11th day of September, 2006.

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23 FRANKLIN D. BURGESS
24 UNITED STATES DISTRICT JUDGE
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